

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

FRANK V. TARPLEY,
Appellant,

v.

U.S. POSTAL SERVICE,
Agency.

DOCKET NUMBER
SL07528710410

DATE: AUG 12 1988

Dennis J. Diffe, National Association of Letter
Carriers, Memphis, Tennessee, for the appellant.

George Whitten, Memphis, Tennessee, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman

OPINION AND ORDER

This case is before the Board on the appellant's petition for review of the initial decision issued on December 10, 1987, sustaining his removal. After full consideration, the Board DENIES the appellant's petition for review because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. However, the Board REOPENS this appeal on its own motion pursuant to 5 U.S.C. § 7701(e)(1)(B), and AFFIRMS the initial decision as MODIFIED in this Opinion and Order.

BACKGROUND

The appellant was removed from his position as Letter Carrier based on charges that he made a false theft report to his supervisor and falsified a sworn statement. Specifically, with regard to the first charge, the agency alleged that the appellant falsely reported to his supervisor that his mailbag had been stolen from his jeep on June 24, 1987, when, in fact, he had mislaid the bag by leaving it in an apartment where he had stopped to use the telephone. With regard to the second charge, the agency alleged that the appellant had made the same false statement, both verbally and in writing, to a Postal Inspector on June 26, 1987.

On appeal to the Board's St. Louis Regional Office, and following the hearing the appellant had requested, the agency's action was sustained. In his initial decision, the administrative judge found, contrary to the appellant's assertions, that he had not been coerced into making a false statement. See Initial Decision (I.D.) at 5. The administrative judge found the agency witnesses to be credible based on their consistent testimony, whereas he assessed the appellant as an incredible witness because he had changed his version of the incident on several occasions. *Id.* at 5-6. The administrative judge further found that the appellant had failed to establish his claim of harmful procedural error. *Id.* at 7. Finally, the administrative judge found that taking disciplinary action

in this case promoted the efficiency of the service, and that removal, based on the sustained charges, was a reasonable penalty. *Id.* at 7-9.

BASIS FOR REOPENING

We reopen this appeal to address the allegation that the administrative judge erred in disallowing two witnesses the appellant had requested to testify at the hearing, Dave Flipppo and Haywood Ward. The record reflects that the administrative judge made the witness rulings during a telephonic prehearing conference that was convened on November 4 and 6, 1987. See Appeal File, Tab 10. The administrative judge disallowed the two witnesses because their expected testimonies were not found relevant to any issues in the appeal. *Id.* The appellant had indicated that Mr. Flipppo would testify regarding the appellant's abilities as a letter carrier, and that Mr. Ward would give testimony pertaining to "complaint of appellant." See Appeal File, Tab 7, Subtab J. The appellant, however, did not object at the November 1, 1987, hearing to the administrative judge's witness rulings. His failure to object at that time precludes him from doing so now on petition for review. See *Hill v. Department of Health and Human Services*, 28 M.S.P.R. 91, 92-93 (1985), *aff'd*, 795 F.2d 1011 (Fed. Cir. 1986) (Table) (employee's failure to object at hearing to introduction of allegedly irrelevant evidence precluded her from doing so on review).

The appellant's remaining allegations on petition for review constitute mere disagreement with the administrative judge's findings and credibility determinations, and, as such, do not warrant full review of the record by the Board. See *Weaver v. Department of the Navy*, 2 M.S.P.R. 129, 133-34 (1980), *aff'd*, 669 F.2d 613 (9th Cir. 1982) (*per curiam*).

ORDER

This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

NOTICE TO APPELLANT


You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.


Robert E. Taylor
Clerk of the Board